

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman  
Tom Fleckenstein, Vice Chairman  
Joan Beck, Member  
Bobbie Mack, Member  
A. Susan Widerman, Member  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Donna Duncan, Director Election Management  
Jared DeMarinis, Director of the Candidacy and Campaign Finance  
Jessica Jordan, Budget and Personnel Director  
Nikki Trella, Election Reform Director  
Mary Wagner, Director of Voter Registration and Petitions  
John Clark, MDVoters Project Manager  
Michael Kortum, CIO  
Terry Harris, Deputy Director of Candidacy and Campaign Finance  
Jaimie Jacobs, Election Reform Deputy Director  
Mary Dewar, Voter Outreach

Also Present: Robert Ferraro, Howard County Citizen  
Michael Berla, Howard County Citizen  
Margaret Jurgenson, Montgomery County Board of Elections Director  
Sara Harris, Montgomery County Board of Elections, Deputy Director  
Nancy Dacek, Montgomery County Board of Elections, President  
Stephen, USA  
Sam Statland, Montgomery County Board of Elections, Member  
Kristen Wyatt, AP  
Caryeron Atkinson, Anne Arundel County  
Gineen Bresso, Governor's Office

**DECLARATION OF QUORUM PRESENT**

After establishing the presence of a quorum, Mr. Burger called the meeting to order at 1:40 p.m.

**APPROVAL OF MINUTES OF MEETING OF MARCH 27, 2006**

Mr. Burger requested clarification on page 5 regarding the certification of the voting system. Replace Ms. Lamone explained that the system is already certified in Maryland with Ms. Lamone explained that re-certification exercises were not necessary each time the software is upgraded. Ms. Beck inquired about the outcome of alternate language for "Personal Identification Number" on page 11. Ms. Trella stated it had been completed. Mr. Fleckenstein made a motion to approve the minutes as amended and Ms. Mack seconded the motion. The amended minutes of the March 27, 2006 board meeting were approved unanimously.

MAY 23, 2006

STATE BOARD MEETING  
151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

## **ADDITIONS TO THE AGENDA**

Chairman Burger stated that some topics that would be included under “New Business” and he would invite Montgomery County to speak at that time. Ms. Beck stated she had some points relating to telephone polling. Chairman Burger stated that could be addressed with “New Business”.

## **ADMINISTRATOR’S UPDATE**

As Ms. Lamone was attending the EAC Standards Committee Meeting, Mr. Goldstein presented to the Board the Administrator’s monthly report.

### **Personnel**

We are sad to announce the resignation of **Terry Harris**, Deputy Campaign Finance Director. Terry has been with SBE for 19 years. Terry is moving to Durham, North Carolina. Her last day will be June 7<sup>th</sup>. Terry will truly be missed.

We are also sad to announce the resignation of **Jan Hejl**. Jan has been with SBE for 5 years, providing valuable assistance to all aspects of voter registration administration. Jan will be transferring to the State Highway Administration as of June 6<sup>th</sup>. We wish both Terry and Jan the best of luck in their future endeavors.

On a happier note we will be welcoming three new employees to SBE in the next several weeks.

1. **Bob Murphy** began work on Wednesday May 17<sup>th</sup> as the project manager for the e-poll book project. His previous experience includes developing Crystal Reports and database applications. Bob is familiar with IT project management and brings a wealth of knowledge and experience to this position.
2. **Lawrence Grinn, Jr.** began work on Thursday May 18<sup>th</sup> as the Chief Information Systems Security Officer. Lawrence has 15 plus years of experience in Information Technology and specifically Information Systems Security. He is a Certified Information Systems Security Professional (CISSP) and he comes to us from two prestigious banking firms within the area, (AllFirst Financial and M&T Bank) where he was a Senior Systems Security Supervisor and Analyst.
3. **Sam McDaniel** starts work as the Procurement Officer on May 26<sup>th</sup>. Sam has many years of procurement experience at the federal level as an employee of Boeing and other major government contractors.

Mr. Burger welcomed the new employees and took the opportunity to thank Ms. Harris and Ms. Hejl for their exemplary service and wished them both the best.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

### **2006 Legislation**

Mr. Goldstein directed the members to the list of legislation that had passed this session. Staff is putting together the 2006 Legislative Change package that will be widely distributed shortly after the final bill signing. We are planning for a new Election Law Article reprint to be completed this fall.

### **Carroll County Redistricting**

Legislation enacted by the 2003 General Assembly created a process for redistricting the commissioners in Carroll County and increased the number of commissioners from 3 to 5. The commissioners were to be elected by district. The Attorney General's office recommended that the commissioners run at large, but a citizen of Carroll County sued. The Carroll County Board of Elections, and they entered into a consent decree adopting the districts established by the Commission for the group that was appointed in Carroll County. That decision is now being challenged and the Court of Appeals has accepted review of the case and has scheduled a hearing on the merits for June 1. SBE is not a party to the case on the merits. Mr. Davis stated that SBE filed a motion for an expedited hearing.

### **Electronic Poll Books**

Staff met with DBM to discuss the procurement of electronic poll books. A determination was made that due to the limited time; an emergency procurement would be necessary and appropriate. Staff is working to develop a contract to fulfill this requirement. In addition, a contract modification with Saber will be needed to obtain the necessary services and changes to MDVOTERS so that it will interface with the electronic poll books.

### **Petitions**

Ms. Lamone approved "advanced determination of sufficiency" for two petitions seeking a referendum on the following legislation:

- HB1368 - Election Law - Voters Rights and
- SB 478 - Election Law - Early Voting (2005 Session)

Advanced determination of sufficiency only pertains to the format of the petition and the summary language that must be included on the back of the petition form. Mark Davis provided invaluable assistance in streamlining the summary language.

### **Rules of Security Behavior**

A conference call between SBE Staff, Mark Davis and the LBE attorneys was held in order to discuss the *Rules of Security Behavior* document that all election works are required to sign and the policy for implementing the *Criminal History Background Investigation*. The attorneys raised a number of important issues and questions that staff are working to address in a new draft of both documents.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

### **Help America Vote Act**

#### Federal Accessibility Grant

The FY 06 grant application to assure access for individuals with disabilities was timely submitted. This will provide funds for accessibility at polling places.

#### Election Judges' Manual and Training

Many chapters of the 2006 election judges' manual have been distributed to the local boards. The local boards are now customizing these chapters with their county-specific instructions into these chapters and submitting them for review and approval. A copy of one of the chapters will be distributed at the Board meeting. As other chapters are finalized, they will be distributed to the local boards for county-specific instructions and reviewed. Ms. Jacobs has placed a sample chapter in the Board Members folders.

The Harford County Board of Elections will be testing portions of the State's election judges' training curriculum during an upcoming municipal election. Jaimie Jacobs is planning on observing the election judges' training for the municipality and including any feedback to improve the curriculum. The voting unit judges' curriculum has been distributed, and the remaining curricula will be distributed as they are complete. Ms. Jacobs will be offering trainings to the local boards on using the curriculum.

#### Voter Outreach

Mary Dewar has conducted trainings for more local boards on the upgraded voting system software. She continues to work with Diebold on the Phase III voter outreach activities, including planning for the Phase III media spots, managing voter outreach events and planning for Baltimore City, and finalizing voter outreach brochures. Ms. Dewar has also been working on redesigning and simplifying the "How to Vote" brochure (now called "Voting in Maryland") with BlueWater Agency.

#### Voter Registration Volunteers

The voter registration volunteer (VRV) manual has been updated to reflect the new requirements of the Help America Vote Act. Local boards use this manual to train individuals who wish to conduct voter registration drives.

To educate already trained voter registration volunteers about the new requirements, staff is developing a newsletter for existing voter registration volunteers. Based on input from the local boards, the draft newsletter includes information about the new requirements of the Help America Vote Act, the redesigned voter registration application, the "top 5" reasons for delays in processing applications, and important dates for the 2006 election cycle

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

### **Voter Registration and Absentee Voting in Nursing Home and Assisted Living Facilities**

With the enactment of House Bill 1368, all local boards are required to administer voter registration and absentee voting in nursing homes and assisted living facilities in accordance with the State's procedures. The State had previously issued procedures, and based on discussions at a meeting of local board representatives last summer, most local boards are generally following the State's procedures. Using the input provided at this meeting, the procedures are currently being review and revised.

Ross Goldstein and Nikki Trella met recently with Secretary of Aging Jean Roesser and Wendy Kronmiller, Director of Office of Health Care Quality for the Department of Health and Mental Hygiene, to discuss the new requirement. Secretary Roesser and Ms. Kronmiller are interested in notifying nursing homes and assisted living facilities of the program and encouraging their cooperation and participation. This effort should make the facilities more receptive when the local boards contact the facilities to schedule a visit. Mr. Burger stated the Board is very thankful for the Secretary of Aging to work on that initiative and offering assistance.

### College Campus Precincts

House Bill 1368 established when a separate precinct must be established for a public or private institution of higher education. Applying the Board's approved policy, guidance has been issued to the local boards on how to determine whether a separate precinct is required. The policy provides a mechanism for the local boards to finalize whether or not a college falls under the requirements of the bill, and puts the onus on the college to make the determination of whether or not they meet the 500 threshold. Ms. Beck inquired if that includes both faculty and student population. Ms. Goldstein replied that it did.

### **Candidacy and Campaign Finance Division**

Due to numerous new political committees, the Candidacy and Campaign Finance Division has scheduled 2 compliance trainings in May. So far this year, CCF has completed 6 trainings with over 170 people in attendance.

As of May 16, 2006, 291 State candidates have officially filed for office.

### Voting System

#### **GEMS Server Upgrades**

The Voting System division has completed the software and firmware upgrade to all voting units and GEMS servers in the State. This effort was completed on schedule. SBE is in the process of closing down this effort by conducting a lessons learned session with our IV&V personnel from RESI (Towson University) and Diebold. Feedback from the LBE satisfaction survey is also being collected and analyzed to enhance our upgrade processes.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

### *Training*

Technical training sessions are being delivered to the local boards. Baltimore City has received three training classes. The classes are System Overview, Touchscreen Operations, and GEMS Operations. Their Optical Scan class and Mock Election Training will be provided by the end of May. Baltimore City is in the process of identifying a mini-election such as a neighborhood community election to give the staff experience conducting an election on the new AccuVote system as well as provide an opportunity to the public to use the new voting system. Mr. Burger inquired how things were progressing. Mr. Torre replied things are going well. Mr. Strauch has been working closely with them in the field and training our people at the warehouse. There is also one person on the ground 24/7 to assist with training.

Statewide training classes are in the process of being coordinated for the remaining 23 jurisdictions. All operation classes (GEMS, Touchscreen, and Optical Scan) will be offered in three separate venues – one in western Maryland, one in central Maryland, and one on the eastern shore. These classes should be scheduled by the end of June.

### **Memory Cards**

To comply with a NASED directive, the Voting System team is defining the chain of custody for memory cards used during the election. In Maryland, memory cards are used in the Touchscreen voting units and the Optical Scan units. Chain of Custody will begin when the ballots are downloaded to the memory cards and continue until the cards have been uploaded during the canvass process.

### Lease for Voting System Equipment, Phase III

The paperwork for the financing of Phase III voting equipment was submitted to the State Treasurer's Office in early May. This is the final equipment purchase for the Statewide voting system and the payments will extend for five years. The total amount financed was \$7.5 million.

### **Optical Scan Upgrade**

The voting system team worked with the local boards to complete the optical scan voting unit upgrade. The optical scan units were upgraded to version 1.96.6. The statewide voting system (Touchscreen units, GEMS server, and optical scan unit) is compliant with the 2002 FEC voting system standard.

### **LBE Questionnaire**

The voting system team developed and distributed a lengthy questionnaire to all the local boards of elections. The purpose of the survey is to allow the voting system team to plan resources and services required by each local board. Additionally, the survey is a mechanism for the local boards to order election supplies such as tamper tape, booth seals, and voting unit paper rolls. The voting system team is in the process of collecting and analyzing the responses of each local board.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Security Assessment

The voting system staff is meeting with the Freeman, Craft, and McGregor Group to review the voting system security procedures used in Maryland. The comprehensive review will begin the week of May 15<sup>th</sup> and be completed no later than September 5, 2006. Mr. Torre added that a security assessment was conducted prior to the November general election and we are tasking the team to go back to 2003 and review all of the documentation, and security processes in place for the local boards to prepare the equipment for an election. Mr. Burger noted that the work is to be done no later than September 5 and asked if there were some quick answers as he doesn't want to delay if we need to bolster up current procedures. Mr. Burger also requested that Board Members get feedback while the assessment is ongoing. Mr. Torre stated that he expects a timeline in early June.

Election Director's Meeting

Mr. Goldstein discussed the Election Director's meeting which was held earlier that day. A variety of topics were covered including early voting, electronic poll books and a lengthy discussion on the implementation of the voter registration system. Mr. Goldstein requested Mr. Clark update the Board Members on the implementation.

**Voter Registration**

Performance and Load Testing

Mr. Clark stated that SBE has received a draft report from the February Performance and Load Test was received from InfoSENTRY on Tuesday, April 18, 2006. The report details areas that Saber can focus on to improve system performance across the State. The week of April 10<sup>th</sup> Saber and Michael Kortum of SBE information technology division began working with County IT staffs, tuning each Board's connection to the Annapolis and Cumberland Data Centers.

Another Performance and Load Test of MDVOTERS was conducted on Friday, May 5, 2006. InfoSentry provided preliminary observations from this Performance and Load Test. In general, the system performed better than in the February test, but there are still some areas needing improvement, such as Site 2 (Cumberland) performance, application errors, and load balancing. SBE will be working with the Saber technical staff and local boards to continue to improve the performance of the system. Additional testing will be performed.

Software Releases

Saber issued a major software release on March 30. This release provides key reports that have been redesigned by the Reports Committee to meet the needs of the LBEs and SBE. Importantly, it also provides a direct, on-line, real time, interface with the Motor Vehicle Administration to verify voter's driver's license numbers. Maryland is the first state in the country to have this automated driver's license lookup ability (outside of

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Michigan in which the Secretary of State heads both Voter and Motor Vehicle registrations.) Nikki Trella, SBE's Election Reform Director, was instrumental in defining this functionality and working with MVA and Saber to accomplish the interface. Jan Hejl extensively tested the interface before it went into production. Mr. Burger recognized Ms. Hejl for her work and again wished her the best of luck with her new position.

The week of April 10, SBE received a new software release, addressing Public Service Requests (PSRs), Election Workers, and additional reports from Saber. This release is undergoing user testing by the Local Boards, supervised by Deputy Project Manager Stacey Johnson.

The latest major software release has been received from Saber. This release is undergoing user testing by the Local Boards and SBE. If approved, the release is scheduled to go into production on May 26. The release provides customized Election Worker and Petition modules and most of the Absentee module based on recent Joint Application Design sessions.

#### Geographic Interface System (GIS) Interface for Street File Maintenance

Saber and SBE continue to work with Montgomery County on their GIS interface. Saber presented a GIS interface specification that had been revised to include changes requested by Montgomery LBE. Montgomery County responded with additional questions on the interface, which were answered by Saber. Montgomery County approved the specification. In addition to the interface specification, a plan of action to transition to the use of this function was discussed in detail with Montgomery LBE.

The MDVOTERS Project Team continues to work with Montgomery County on their GIS interface. On Monday May 15, SBE, Saber, Montgomery LBE, and Montgomery County GIS section discussed the next step, which involves the Montgomery County GIS section providing an updated street file to Saber. The GIS section reported they had not performed any Quality Control reviews on the data they had been sending to Montgomery LBE since the data sent in November 2005, and that the GIS section would need until May 26 to get the data ready to be sent to Saber. As soon as Saber receives the data they will start what is called the resynchronization process, to bring Montgomery County's street file into the MDVOTERS database with the rest of the State data. Mr. Burger asked Ms. Jurgenson if she had anything to add. Ms. Jurgenson wanted to clarify that the GIS department, as well as the local board, had been working under the assumption that the data they were experimenting with was for a testing environment as they were trying to work through the GIS interface. Currently, they are performing data quality control. Mr. Burger inquired if the GIS interface is moving along as scheduled. Mr. Clark stated the interface is on schedule.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

#### Joint Application Design Session Lists Under Review

The week of April 3 and 10 Saber delivered the lists of changes needed to customize the MDVOTERS system to meet Maryland business processes. These lists were developed by Local Board representatives during the Joint Application Design (JAD) sessions held March 14-16. The areas affected include Election Worker, Petition, Election Management, Absentee, and Provisional Voting. The lists were sent for review by the JAD participants, and the items will be incorporated into future software releases.

#### Security Testing

We have received responses to our request for Security Testing of the MDVOTERS system. These will be reviewed over the next few weeks and a company will be selected. Testing will be conducted in June. This testing will involve attempting to intrude and penetrate the security defenses set around the MDVOTERS system. Mr. Burger requested that Mr. Clark keep the Board Members informed as to how the security testing is progressing.

### **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Davis delivered his report on the current state of the legal matters pending before the Board. Mr. Davis also added that while SBE is not a party, he is monitoring *Getty v. Dembrow* regarding the Carroll County Commissioners.

#### **Litigation**

*Schade v. SBE* (Circ. Ct. for Anne Arundel Co.) – Depositions likely to begin in May. Document discovery will resume. Judge Mank recently issued a scheduling and discovery order. That order calls for a pretrial conference in June 2007.

*Nader for President 2004 v. SBE* (fee petition claim for 2004 election)(Court of Special Appeals) – Court of Special Appeals dismissed Nader's appeal. Nader's petition attorney's fees due in Circuit Court for Anne Arundel County (Judge Caroom) on April 28.

*Maryland Green Party v. Maryland Board of Elections* (2000 denial of ballot access to Green Party; claim for attorneys' fees of \$338,000 plus)(Court of Appeals) – Scheduling Plaintiff has filed an attorney fee claim of \$507K. Scheduling order issued by Judge Looney. SBE to begin discovery. Final briefing due on August 15, 2006.

*Hufnagel v. State Board of Elections* (2002 denial of ballot access to Green Party)(Circ. Ct. for Anne Arundel Co.) - Motions hearing held on October 31, 2005. SBE's motions to dismiss still pending.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

*Stysley v. Carroll County Bd. of Elections* (attorneys' fees petition claim; spin-off of *Maryland Green Party*) (Cir. Ct. for Carroll County) - Green Party seeks \$45K in attorney's fees for denial of ballot access in 2000. The circuit court dismissed plaintiff's petition as untimely and denied his motion for reconsideration. Plaintiff will likely appeal.

*Schaefer v. Lamone and Rayburn* (U.S. District Court, Judge Legg) – Plaintiff, a pro se voter and potential candidate, challenges the statutory ballot placement scheme. He claims that the arranging primary candidates alphabetically denies him equal protection. Defendants will file a motion to dismiss. Plaintiff filed same suit in 1986.

*Daniel Vovak v. State Board* (U.S. Supreme Court) – On April 17, 2006, the Supreme Court dismissed the petition for certiorari filed by the self-described “Wig Man”, who wanted his title to appear on the Maryland ballot for U.S. Senator.

Mr. Davis stated that a lot of time has been spent assisting local board counsel with a Public Information Act request filed by the Marylanders for Fair Elections. 22 of 24 local boards received the request and Mr. Davis states that the scope is almost at great as that filed by the plaintiffs in the Schade case.

Mr. Fleckenstein noted that Daniel Vovak has actually filed for office and asked how his name will appear on the ballot. Ms. Duncan responded that he can not be on the ballot as “The Wig Man and will be on as Daniel “Wig Man” Vovak.

## **REGULATIONS**

### Ratification of Proposed & Emergency Regulations

Mr. Burger requested that the Board ratify the votes on the emergency and proposed regulations taken by telephone and email on May 15 & 16, 2006.

*Regulation 33.05.07.03* (Inactive Voters and Petitions) was adopted unanimously as an emergency regulation and a proposed regulation.

*Regulation 33.06.02.02* (Information Page) was adopted as an emergency regulation and a proposed regulation by a vote of 4-1, with Ms. Beck voting against this proposed change. Ms. Beck noted that a candidate for office should be required to provide his or her residential address on the petition.

*Regulation 33.06.02.04* (Information Page) was adopted as an emergency regulation and a proposed regulation by a vote of 4-0, with Ms. Beck abstaining from voting on this proposed change. Ms. Beck stated that she does not believe that a court should overturn current law.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

*Regulation 33.06.03* (Signature Pages) was adopted unanimously as an emergency regulation and a proposed regulation.

*Regulation 33.06.04* (Filing Procedures) was adopted unanimously as an emergency regulation and a proposed regulation.

*Regulation 33.06.05* (Verification and Certification) was adopted unanimously as an emergency regulation and a proposed regulation.

### **Proposed Regulations for Adoption**

Ms. Trella referenced a memorandum explaining the proposed changes, the proposed changes, and letters from the Howard County Board of Elections and the Baltimore City Board of Elections supporting an extension of the absentee ballot deadline for absentee ballots mailed within the United States.

*33.11.03.08* (When Absentee Ballots Are Timely) – Ms. Trella explained that the proposed change would extend the current deadline for absentee ballots mailed within the United States. The proposed deadline would be the same as the deadline for absentee ballots mailed from outside the United States, i.e., 10:00 a.m. the 2<sup>nd</sup> Wednesday after a gubernatorial primary election and 10:00 a.m. on the 2<sup>nd</sup> Friday after other elections. This change gives the United States Postal Service additional time to deliver a ballot that is mailed before Election Day.

Mr. Burger made a motion to adopt the proposed changes as both a proposed regulation and an emergency regulation, and Mr. Fleckenstein seconded the motion. Margaret Jurgensen, Election Director for Montgomery County, asked whether an absentee ballot would be accepted if there was no postmark. Ms. Trella responded that current regulations provide that the date written on the oath is used if there is no postmark. After further discussion, Ms. Duncan suggested the Board vote on the proposed regulation today and that staff members would review the relevant regulations and identify any additional regulation changes that are necessary based on the discussion. The motion passed unanimously.

Mr. Burger thanked the Howard County Board of Elections and the Baltimore City Board of Elections for their letters supporting extending the absentee ballot deadline.

*33.11.04.06* (Hold Back of Absentee Ballots) – Ms. Trella explained that the approval of the previous motion requires that other regulatory references to domestic and overseas ballot deadlines be removed. The proposed change removed a reference to the overseas ballot deadline. In response to a question from Ms. Jurgensen, Ms. Duncan noted that the absentee ballot canvasses are now referred to as “Absentee 1” and “Absentee 2.” The formerly used terms (Domestic Absentee Canvass and Overseas Canvass) are not accurate as there are domestic absentee ballots canvassed in Absentee 2 and overseas

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

ballots canvassed in Absentee 1. Mr. Fleckenstein made a motion to adopt the proposed changes as both a proposed regulation and an emergency regulation, and Mr. Burger seconded the motion. The motion passed unanimously.

33.16 (Provisional Voting) – Ms. Trella noted that counsel in the Department of Legislative Services recently pointed out that some of the authority lines in Title 16 were incorrect. Ms. Trella explained that the purpose of the authority line is to refer to the appropriate statute that authorizes regulations and the content of the regulation. Ms. Beck made a motion to adopt the proposed changes as both a proposed regulation and an emergency regulation, and Mr. Fleckenstein seconded the motion. The motion passed unanimously.

**WAIVER OF LATE FEES**

The Friends of Nicole Pastore Klein, A3937, apply for reconsideration regarding the denial of the waiver request. Ms. Harris requested the Board accept the Administrator's recommendation of denying the reconsideration. As a policy, the Board decides all reconsideration request. Ms. Harris stated this waiver should be denied on the basis that notice was sent on numerous occasions notifying the officers of the campaign to download the software.

Mr. Burger asked if this was a case of someone not applying the software patch and if this is relatively common or rare occurrence. Ms. Harris replied that numerous organizations waited until a day or two before the report was due and realized they couldn't use the software and called the help desk.

Mr. Burger made a motion to accept the Administrator's recommendation to deny the reconsideration. Mr. Fleckenstein seconded the motion. The motion passed unanimously.

**OLD BUSINESS**

None.

**NEW BUSINESS**

Mr. Burger set the schedule for new business as follows:

- Mr. Ferraro;
- Mr. Berla;
- Montgomery County Board of Elections to discuss their concerns and ask questions regarding early voting;

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

- Ratification of the State Board of Elections policy on establishing a precinct on college campuses;
- Electronic poll book certification process.

Ms. Beck requested a 10 minute break. Mr. Burger granted the request. Meeting recessed at 3:00 p.m. Meeting re-adjourned at 3:15 p.m.

Mr. Burger stated that the Board has granted 3 minutes each to Mr. Robert Ferraro and Mr. Michael Berla to make a presentation to the Board. Mr. Burger welcomed the speakers on behalf of the Board.

Mr. Robert Ferraro

Mr. Ferraro stated he was out of the country when the latest news of Diebold's security vulnerability broke in this country. He stated that there was a tremendous amount of discussion and due to the severity of the vulnerability several states have issued emergency regulations. He further stated that seven counties in California have decided to not use the Diebold system and revert to paper ballots for the upcoming election. He stated he contacted Mr. Kortum as he saw no press release from the State Board on the website. He impressed upon the Board that citizens are concerned about these recent problems. Mr. Ferraro read an excerpt from a report by Dr. Ed Felton. Mr. Ferraro thanked the Board for the opportunity to speak.

Mr. Burger stated that the Board had in fact issued a press release. Mr. Ferraro stated he was aware of that, but that it was not listed on the website. Mr. Fleckenstein inquired which citizen groups Mr. Ferraro is associated. Mr. Ferraro stated he has worked with True Vote and Common Cause. He also stated that he has talked to ACLU and Sierra Club. Mr. Fleckenstein asked if Mr. Ferraro was representing any of those groups in his presentation to the Board. Mr. Ferraro responded no. Ms. Beck asked Mr. Ferraro where he resided. Mr. Ferraro replied Columbia, Maryland. Ms. Mack asked what counties in California have switched to paper ballots. Mr. Ferraro did not have that information and stated he would follow up with written correspondence to the Board in the coming weeks. Ms. Mack inquired about Mr. Hirsti's attack in a mock election and whether it was in a secured manner or did he walk into an election. Mr. Ferraro responded that the Administrator of Election of Leon County, Florida requested Mr. Hirsti to attempt to hack their election system, and set up a mock election to test whether their administrative procedures would be effective in thwarting his attempts to alter the election. Ms. Mack asked if this was an optical scan system. Mr. Ferraro replied it was an optical scan system.

Mr. Burger welcomed Mr. Michael Berla.

Mr. Michael Berla

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Mr. Berla stated that the Accu-Vote system is fatally flawed. He called for the State Board to petition the state legislature to come back into special session and to adopt the legislation that the Governor endorsed and the House of Delegates adopted unanimously in March to hold this year's primary and general elections using verifiable recountable paper ballots. Mr. Berla thanked the Board for their time.

Ms Beck asked where Mr. Berla resided. Mr. Berla replied that he resides in Columbia and is not representing any group.

#### Montgomery County Board of Elections

Ms. Dacek, President of the Montgomery County Board of Elections stated she was before the Board to get answers to three questions. Mr. Burger asked if these questions have been previously asked or are they new issues. Ms. Dacek stated that two additional questions have come up since a letter was written to the Board. Ms. Dacek stated that Mr. Goldstein at the MAEO conference addressed the number of voting units to be used at each polling place for early voting. In Montgomery County's case it would be 36 units at each location. Ms. Dacek asked if there was any wiggle room. Mr. Burger replied that he had not been exposed to the guidelines. Mr. Goldstein stated that the guidelines are still in draft form. He further stated that he had been developing the guidelines with a MAEO Committee, which included representatives from Montgomery, Anne Arundel, Baltimore County, Prince George's, Caroline and Calvert County. The group identified issues and then came up with a standard set of procedures or guidelines. The goal is to present the Board with these guidelines at the next board meeting.

Mr. Burger stated it is late for the local jurisdictions to be getting this information. Ms. Dacek agreed. She also stated that they have contacted several organizations and the city of Rockville will not allow them to use their City Hall, a site that was specified in the legislation. It is difficult to find a location that will hold 36 units. Mr. Goldstein explained the formula used to arrive at the 36 units needed for early voting. Mr. Goldstein estimates early voting turnout to be approximately 20 percent. Applying the current requirement in regulations of 200 voters per voting unit, divide it by three for the three sites in Montgomery County and divide that again by five for the five days of early voting and that gives you the number of potential voters. For Montgomery County it worked out to be 36 units per polling place. Mr. Goldstein stated he was surprised at the high number, but when presented to the MAEO Committee, the consensus was to go with a higher number of units.

Ms. Dacek stated she needed guidance as the three locations picked by the legislature will only hold 20 voting units. Mr. Burger stated that 20 units is not close to the proposed 36 units. He further stated that with early voting new territory is being broken and he would rather err on the cautious side. Mr. Goldstein stated that a questionnaire has been sent to the local boards to provide the State Board with very specific information about the sites

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

for large counties. The local boards were asked to analyze whether the site is useable or not. If it is not useable, the local boards were requested to propose an alternative site based on their expertise of the area and the requirement of the statute that other sites be proximate to the site assigned. Mr. Burger asked when the completed questionnaire would be complete. Mr. Goldstein replied it would be the following day. Ms. Dacek pointed out that the statute stipulates that the Administrator has the final say in determining an alternative early voting site.

Ms. Mack inquired as to the hours of early voting. Mr. Goldstein stated it is a full Election Day, 7 a.m. to 8 a.m. Ms. Mack stated she was concerned as some of the sites picked are recreation centers and she knows these centers have after-school programs. Ms. Jurgensen stated they are seeking guidance so they can complete the contract with the Recreation Department to accommodate 100 voting systems over three sites. She further affirmed that these voting units would not be used on Election Day. Mr. Goldstein stated that was correct and under the proposed policy would also reduce the number of voting units needed on Election Day. Ms. Beck asked if fewer units would be sent out on Election Day. Mr. Goldstein stated that would be the case.

Mr. Burger requested a Board policy that would allow a 10 percent variance on the number of voting units listed in the draft proposed guidelines. No members challenged the policy. Ms. Dacek thanked the Board for their guidance on this issue.

Ms. Dacek stated it was her understanding that the guidelines propose that a list of early voters will be made available on the day after each early voting day. She said this is not part of the legislation passed. Mr. Goldstein responded that this is again contained in the proposed guidelines that were submitted to the MAEO Committee and for discussion purposes at the MAEO Conference. Ms. Mack inquired if names can be provided. Ms. Widerman asked what the purpose was. Mr. Goldstein explained this would be consistent with what is currently done with absentee voters. Mr. Burger stated that he is troubled by the distinction between releasing the names of people who have requested absentee ballots and listing the names of the people who have voted early. He stated he is concerned by releasing names of people who show up to vote due to privacy issues. Mr. Goldstein stated that it is public information regarding voter history that can be obtained through Public Information Act. Mr. Burger stated he has an issue with posting the number of people who voted and would like his thoughts taken into consideration when working on these procedures.

Ms. Dacek posed her third question to Board that relates to the time for release of early voting results. Under the previous voting system used in Montgomery County, the county had a mid-day pick up of ballots and was able to count those ballots in the afternoon and release the results of the mid-day pick up to the public, candidates and press immediately after the close of the polls at 8 pm on election night. Ms. Dacek explained that it was her understanding that with the additional layers of security, we

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

could expect a slower speed of receipt of election night results. Slower receipt might be perceived and reported by the media as a problem. The proposed guidelines do not propose release of the early voting numbers as a separate count on election night. Following discussion relating to perception of the election outcome based on the early voting results, Mr. Burger expressed his preference to follow the proposed guidelines and withhold the information until the final count.

#### Electronic Poll Books

Mr. Burger stated that the members had been given the opportunity to read the certification report of the e-poll book 4000 series developed by the voting system team. Members were polled by phone on May 16, 2006 regarding certification of the e-poll book. Mr. Burger further stated that the board had not ratified the vote and believes that more discussion is needed around the certification request. Ms. Beck stated she had a personal issue regarding the manner in which the vote was taken. It was her understanding that when she told Mr. Goldstein that she felt it inappropriate to vote by phone rather than in the full Board meeting, she was not voting to certify e-poll books. Mr. Goldstein stated that while Ms. Beck expressed her desire to discuss e-poll books at an open meeting, he thought she was voting when during the conversation she stated she was okay with the certification. Ms. Beck responded that while she didn't think she had a problem with certification, she feels strongly that the Board should discuss issues in open meeting and take a vote. She believes that is the way votes ought to be taken and that was her intent.

Ms. Mack stated that it was her impression the polling of Members was to try to get the funds released for e-poll books. Ms. Widerman expressed her concerns in voting individually. She further stated that the Members are not paid employees of the agency, all bring different backgrounds and expertise and different questions to the table. Ms. Widerman remarked that she respects the questions her colleagues ask and values their questions and opinions which help her decide and formulate her own opinions. Having individual voting did not allow for open discussion. Mr. Burger stated that he, not staff, authorized the polling of members for certification.

Ms. Widerman stated she was under the impression she was voting to release funds that were necessary to purchase e-poll books. Mr. Burger replied they were voting to certify the system and without certification no purchase can occur. Ms. Widerman stated that was not her understanding, so therefore she misrepresented her vote. She believes the emphasis on the purchase of e-poll books has been placed on the convenience of voting and while in a perfect world this would be ideal, she wants to make sure the task of early voting is properly addressed. Ms. Widerman stated that unless it can be guaranteed that the e-poll books interact in real time, she is not inclined to expend funds at this point in time. She also inquired if this can not be achieved, what is Plan B. She does not want

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

problems with the e-poll books to arise in September and it is too late to implement any other options such as printing of additional provisional ballots or optical scan.

Mr. Goldstein replied the certification required only relates to a voting system. There is no certification standard for e-poll books. The certification is necessary for the part of e-poll books that interfaces with the voting machines. The certification document provided to the Members focused on the encoder portion. The questions raised by the Members specifically were regarding the networking of the e-poll books to provide a real time update to voter registration. Mr. Goldstein further discussed the network capabilities of the e-poll book. He stated that if he were a voter in Montgomery County and showed up at a polling place in Rockville and voted and then proceeded to a polling place in Gaithersburg to vote, the e-poll book would reflect that he had already voted at the Rockville location. Ms. Beck inquired if this update is an instantaneous process. Mr. Goldstein affirmed that that all three early voting centers would be updated within that jurisdiction. He further explained that if he were to go to a voting center outside of his jurisdiction, he would be given a provisional ballot to vote. One advantage to the e-poll books is the ability to update voter history immediately after the election. When it is time to canvass provisional ballots, the local boards are going to know how voted during early voting. Should a person voted during early voting in their jurisdiction and vote a provisional ballot elsewhere, the local boards will see the voting history and the provisional ballot would be rejected. Mr. Burger asked if this addresses early voting fraud. Mr. Goldstein replied yes.

Ms. Beck inquired if all the voting history is going to be uploaded back into the system prior to Election Day. Mr. Goldstein explained that in addition to the e-poll books being networked together, all of the early voting sites will have a link up to the State server. For security reasons, this is not the MDVOTERS database, but a shared database. Each evening an upload will occur and by the end of early voting the server will have all the current information. This information will then be used to update the e-poll books with voting history from early voting to be used on Election Day. Mr. Burger thanked Mr. Goldstein for the update and further emphasized that to vote early you must go to your county of residence and if you go outside your county of residence you will be issued a provisional ballot. Mr. Goldstein replied yes. Mr. Burger inquired if a voter votes a provisional ballot whether that would be identified in e-poll books. Again, Mr. Goldstein replied yes.

Ms. Wideman stated it was her understanding that e-poll books requires an interface with MDVOTERS and is there enough time to accomplish this task. Mr. Goldstein stated that the new Project Manager, Bob Murphy is very familiar with type of data processes and believes it can be accomplished. Mr. Goldstein stated the bigger question now is getting the contract in place to begin implementation.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Ms. Widerman asked if a drop-dead date had been established. Ms. Goldstein indicated that the drop-dead date had not been reached and the date has yet to be determined. Mr. Goldstein stated this had been discussed at the Election Director's meeting held earlier that day. Mr. Burger stated he was more comfortable after hearing about the processes and controls, however he wants to make sure that all areas of potential voter fraud have been addressed. Ms. Widerman stated she wants to see a contingency plan in place should e-poll books not be implemented.

Ms. Beck expressed concern regarding moving forward with implementation and the ability to bring all the systems together. Ms. Mack stated she was concerned about MDVOTERS ability to perform. Mr. Goldstein stated that e-pollbook is a technology that has been successfully piloted throughout the state. MDVOTERS, while there are issues, has been utilized as the statewide voter registration database for several months. He further stated that it is important to remember the distinction between integration and interface. An integration is where the systems are actually talking to each other through a set of communicating links. What would occur with e-poll books and MDVOTERS is an interface where data is being extracted from one system and placed into another system in order to walk through some election processes.

Ms. Beck inquired for the e-poll books have been certified by an ITA chosen by NASED. Mr. Goldstein stated yes. Ms. Beck asked which part of the e-poll book had been certified. Mr. Goldstein replied the hardware and software related to encoding the voter access card.

Mr. Burger requested that SBE staff provide Board Members with more in-depth policies, procedures and flow charts on how the implementation, and the functionality of e-poll books will take place for early voting.

**SCHEDULING OF JUNE MEETING**

The next meeting of the State Board will be held on June 20, 2006 at 1:30 p.m.

**CLOSED SESSION**

May 23, 2006

Mr. Burger convened the closed session at 5:00 p.m. pursuant to a Statement for Closed Meeting in order to discuss the current status of negotiations of the Diebold e-poll books contract pursuant to State Government Article §10-508(a)(14). Ms. Mack made a motion and Ms. Beck seconded the motion, and on a roll call vote. Vice Chair Fleckenstein was absent. Ms. Beck, Ms. Widerman and Ms. Mack, all voted in the affirmative.

No Board actions were taken. Mr. Burger adjourned the meeting at 5:40 p.m.

MAY 23, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

**ADJOURNMENT**

The meeting was adjourned at 4:50 p.m.

---

Gilles W. Burger, Chairman